

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

IN RE CAPITAL ONE TELEPHONE  
CONSUMER LITIGATION ACT  
LITIGATION

This document relates to: ALL CASES

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Master Docket No. 1:12-cv-10064  
MDL No. 2416

**Joint Motion to Stay Proceedings Pending Class Mediation**

Class Plaintiffs and all Defendants, through counsel, respectfully move the Court to stay MDL proceedings pending mediation of the class claims before retired Judge Edward A. Infante. In support of this joint motion, the undersigned parties state as follows:

1. The Judicial Panel on Multidistrict Litigation has transferred over 30 actions alleging violations of the Telephone Consumer Protection Act, including three class actions, to this Court for centralized pretrial proceedings. The Class Plaintiffs recently filed a consolidated amended complaint.
2. Class Plaintiffs and Defendants have committed, in good faith, to pursue private, non-binding mediation. They have jointly selected the Honorable Edward A. Infante, retired Chief Magistrate Judge of the United States District Court for the Northern District of California, as their mediator. The undersigned parties have sought available dates from Judge Infante and anticipate that the initial mediation session will occur in late June 2013. Judge Infante has presided over more than 3,000 settlement conferences and recently successfully mediated a nationwide TCPA class settlement in *Arthur v. Sallie Mae* (W.D. Wash.). The parties' selection of Judge Infante demonstrates their commitment to the mediation process.
3. This Court has discretion to stay proceedings "to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants,"

*Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936), and MDL courts routinely stay litigation when the parties initiate private mediation. *See, e.g., In re Human Tissue Prods. Liability Litig.*, No. 2:06-CF-00135-WJM-MF, MDL No. 1763 (D.N.J. March 3, 2008) [Dkt. 607]; *In re Pet Foods Prods. Liability Litig.*, No. 1:07-cv-02867-NLH-AMD, MDL No. 1850 (D.N.J. Sept. 26, 2007) [Dkt. 72]; *see also In re Midland Credit Management, Inc., Telephone Consumer Protection Act Litig.*, No. 3:11-md-2286 MMA (S.D. Cal. Jan. 30, 2013) [Dkt. 48] (continuing case-management deadlines after the parties signaled their intent to mediate).

4. Here, a stay of proceedings is necessary and appropriate to protect the mediation process and preserve the resources of the Court and the parties. Given the substantial legal and factual issues this MDL presents, mediation will require the full attention of the class-action parties. The case-management tasks currently scheduled will only divert those parties' limited time and resources and hinder the effectiveness of the mediation process. A stay will also promote judicial economy, as many of the scheduled tasks will prove unnecessary if mediation resolves the Class Plaintiffs' claims.

5. Further, a stay of all MDL proceedings is necessary to achieve the purpose of MDL centralization. If individual claims were allowed to proceed while the class claims are being mediated, discovery into Capital One's calling practices would occur piecemeal, with individual plaintiffs potentially taking different positions on discovery issues than class plaintiffs would, and with Capital One being forced to address the same discovery multiple times. The MDL mechanism was designed to avoid precisely this type of inefficient, inconsistent discovery.

6. Under the proposed stay, Capital One will not be required to respond to the consolidated Class Action Complaint, nor will the parties submit an amended 26(f) report or joint e-discovery plan, by the March 29 deadline. The April 9 status conference with the Court

will likewise be postponed pending the results of mediation.

7. The undersigned parties agree that a stay will not affect Capital One's agreement to produce specified account records to the Individual Plaintiffs, which will allow them to assess the prospects of individual settlement of their TCPA and/or non-TCPA claims with Capital One.

8. The undersigned parties have sought agreement from all individual plaintiffs and co-defendants. Capital One received agreement from all co-defendants with the relief sought in this motion. Liaison counsel received agreement from all individual plaintiffs with the relief sought in this motion, with the following conditions and exceptions:<sup>1</sup>

- a. Individual Plaintiffs Phillip Baltazar, Individual Case No. 1:12-cv-1013; Cynthia Biletnikoff, Individual Case No. 1:12-cv-10138; Marklyn Tyrone Johnson, Individual Case No. 1:12-cv-10132; Lindy Libert, Individual Case No. 1:12-cv-10106; Desiree McShane, Individual Case No. 1:12-cv-10128; and Benjamin Wilkes, Individual Case No. 1:12-cv-10129 agree with the relief sought, provided that Capital One meets its previously agreed-upon obligation to produce specified account records on or before April 5, 2013. Capital One will meet this obligation.
- b. Individual Plaintiff Jessica Vadella, Individual Case No. 1:12-cv-10134 does not agree with the relief sought.

9. The parties will promptly inform the Court of any developments in the mediation process. Should mediation prove unsuccessful, the parties will maintain all the arguments and rights they had before the stay was implemented.

WHEREFORE, the undersigned parties respectfully request that the Court exercise its

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<sup>1</sup> Liaison counsel awaits word from individual plaintiff Carrie Tate, Individual Case No. 1:12-cv-10133, and will inform the Court of Ms. Tate's position at the presentment of this motion.

discretion and stay all MDL proceedings to allow the class-action parties to focus solely on the upcoming mediation process.

Dated: March 21, 2013

Respectfully submitted,

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Dated: March 21, 2013

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### CERTIFICATE OF SERVICE

I certify that on March 21, 2013, a copy of the foregoing **Joint Motion to Stay Proceedings Pending Class Mediation** was filed electronically. Notice of this filing will be sent to all counsel of record by operation of the Court's electronic filing system.

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